

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Thomas Lucas o/b/o Ivy McCoy, :
Plaintiff : Civil Action 2:11-cv-00429
v. : Judge Economus
Michael J. Astrue, Commissioner of : Magistrate Judge Abel
Social Security, :
Defendant

Report and Recommendation

This matter is before the Magistrate Judge on defendant Commissioner of Social Security Michael J. Astrue's January 6, 2012 motion to dismiss (doc. 15).

Defendant maintains that plaintiff cannot pursue his Title XVI claim for Supplemental Security Income benefits. Even if it is determined that the claimant was disabled, plaintiff has not established that he meets the eligibility requirements to receive any underpayment that could be awarded based on plaintiff's claim for Supplemental Security Income benefits claim. Plaintiff does not oppose defendant's motion. *See* doc. 18.

The Magistrate Judge RECOMMENDS that defendant Commissioner of Social Security Michael J. Astrue's January 6, 2012 motion to dismiss (doc. 15) be GRANTED. Plaintiff's claim for Supplemental Security Income benefits under Title XVI should be

DISMISSED. This action continues with respect to plaintiff's claim for benefits under Title II of the Social Security Act.

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days, file and serve on all parties a motion for reconsideration by the Court, specifically designating this Report and Recommendation, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1)(B); Rule 72(b), Fed. R. Civ. P.

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to *de novo* review by the District Judge and waiver of the right to appeal the judgment of the District Court. *Thomas v. Arn*, 474 U.S. 140, 150-152 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *United States v. Sullivan*, 431 F.3d 976, 984 (6th Cir. 2005); *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995). Even when timely objections are filed, appellate review of issues not raised in those objections is waived. *Willis v. Sullivan*, 931 F.2d 390, 401 (6th Cir. 1991).

s/ Mark R. Abel
United States Magistrate Judge